

## **REMARKS**

Favorable reconsideration and allowance of this application are requested.

As a procedural note, the present amendment is being filed concurrently with a formal Request for Continued Examination (RCE) under 37 CFR §1.114. Accordingly withdrawal of the "finality" of the March 28, 2008 Official Action is in order so as to allow entry and consideration of the amendments and remarks presented herewith.

### **I. Discussion of Claim Amendments**

By way of the amendment instructions above, pending independent claim 1 has been amended so as to emphasize that the process of the present invention comprises contacting a surface region of soil with a biologically active material to form a biologically active layer on or in the soil surface region such that at least an upper part of the biologically active layer is located above a level of contaminated groundwater in the soil, and then causing the contaminated groundwater to contact the biologically active material in the biologically active layer with the aid of a gas and/or by pumping to thereby remove the contaminant from the contaminated groundwater

That contact between the biologically active material and the soil is practiced according to the present invention is evident throughout the specification as originally filed, especially the drawing figures thereof. In this regard, the fact that the biologically active material is present in a "layer" in contact with a soil surface region is evident in Figure 1, wherein the "ground" surface is identified and a layer depth (2) of biologically active material is in contact with a soil surface region. In addition, page 2, lines 14-16 discloses one embodiment of the invention wherein trenches having the biologically active material are formed in the soil. Self-evidently, the biologically active material in such trenches would necessarily be in contact with the soil surface region.

Claims 13 and 14 are new and are based on the description of the embedment appearing at page 2, lines 14-16, that is, wherein trenches having the biologically active material are formed in the soil.

Therefore, following entry of this amendment, claims 1-4 and 7-14 will remain pending herein, of which claims 11-12 have been allowed. Allowance of all pending claims is therefore solicited.

## II. Response to 35 USC §103(a) Rejection

The only issues remaining to be resolved in this application are the rejections advanced under 35 USC §103(a). Specifically, claims 1-4 and 7-8 attracted a rejection under this statutory provision based on Jackson (USP 6280625), while claims 9-10 were rejected based on Jackson, Lacey and Sorenson. Applicants suggest that the amended claims presented above patentably distinguish this invention over all applied references.

Specifically, applicants note that the "packing material" of Jackson which chemically interacts with contaminants in the ground water (column 4, lines 53-54) is physically contained within cylinder 57 within the wellbore 51. As such, Jackson does not teach to physically contact the soil with the "packing material". In direct contrast to Jackson, the present invention contemplates **contacting a surface region of soil with a biologically active material** to form a biologically active layer on or in the soil surface region such that at least an upper part of the biologically active layer is located above a level of contaminated groundwater in the soil.

Jackson therefore teaches directly away from the presently claimed invention since the "packing material" (which the Examiner is apparently reading as a "biologically active material") does not in fact contact a soil region at all. Indeed, according to Jackson, it is imperative that the "packing material" be maintained in **isolation** from the

soil by means of the cylinder 57. As such, one of ordinary skill in this art having knowledge of Jackson would not be directed to the presently claimed invention.

Withdrawal of the rejection against the pending claims under 35 USC §103(a) based on Jackson is therefore in order.

Lacey and Sorenson fail to cure the deficiencies of Jackson described above. Thus the fact tat the addition of an electron acceptor per se may be known in this art does not suggest the direct contact between the biologically active material and the soil surface region as contemplated by this invention. Withdrawal of the rejection under 35 USC §103(a) based on Lacey and Sorenson in combination with Jackson is therefore also in order.

### III. Fee Authorization

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

Respectfully submitted,

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